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SEA 10.0

SOVEREIGNTY CLAIMS IN THE SOUTH CHINA SEA

Rival claims to various islands in the South China Sea provide the potential for serious conflict, particularly since the area may contain important oil and gas deposits. The Socialist Republic of Vietnam, People's Republic of China (PRC), Republic of China (ROC), and Philippines now claim sovereignty or jurisdiction over the Paracel Islands, Macclesfield Bank, and/or islands in the Dangerous Ground area, including the Spratly Islands. Great Britain, Japan, and France have made claims in the past but do not now pursue them.

Although the islands in question have little intrinsic economic value, the establishment of recognized sovereignty over them could greatly increase a nation's rights to contiguous marine resources, living and non-living, if the islands were used as base points and:

- the surrounding seabed were considered continental shelf of the islands rather than a natural prolongation of the mainland; or
- equidistant lines were used to divide the area of the seabed over which adjacent countries had rights; or
- 200-mile economic zones were applied.

Nevertheless, even the establishment of recognized sovereignty would not be sufficient for resolving the question of rights over marine resources, because the claimants have not agreed on what principle or principles to use for defining these rights. The Republic of China, for example, is the only active claimant to have signed the 1958 Convention on the Continental

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AND METHODS INVOLVEDReport No. 672
January 6, 1977

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Shelf. The Law of the Sea Conference might provide helpful criteria; however, while Peking and Manila now participate in the Conference, Taipei and Hanoi do not.

Claimants have supported their assertions of sovereignty by the deployment of troops and by a variety of legal and historical arguments. On the basis of available evidence, no country seems able to establish persuasively the legitimacy of its claims with respect to competing claims.

Imprecise Definition of Spratly Islands

The geographic terms themselves complicate discussion of the claims. Although the claimants apparently agree on the general extent of the Paracel Islands, Macclesfield Bank, and Dangerous Ground, they do not agree on a definition of the Spratly Islands. (See Annex, Map A, for a general view of the South China Sea.)

The Paracels, it is generally agreed, encompass about 20 small islands divided into two main groups: the north-eastern Amphitrite Group, which includes Woody, Rocky, and Tree Islands; and the southwestern Crescent Group, which includes Pattle, Robert, Money, and Duncan Islands. Also included but separate from the two main groups are Lincoln and Triton Islands. Woody is the largest island, with a length of about 2,000 yards and a maximum width of 1,200 yards. (See Map B for the Paracel Islands.)

Macclesfield Bank is a submarine feature, about 80 nautical miles long and 25 nautical miles wide, southeast of the Paracels. Water depths range from about 4 to 45 fathoms.

Dangerous Ground is a largely uncharted area south of Macclesfield Bank. Lying on or near this ground are numerous small islands, including Amboyna Cay, Flat Island, Itu Aba Island, Namyit Island, Loaita Island, Lankian Cay, Nanshan Island, Northeast Cay, Sand Cay, Sin Cowe Island, Southwest Cay, Spratly Island, Thitu Reef, and West York Island. Also in the area are several submerged features, including Reed Bank. The largest island is Itu Aba, with a length of about 4,000 yards and a maximum width of about 1,500 yards. (See Map C for islands in the Dangerous Ground area.)

All interested parties agree that the Spratlys are among the islands in or near Dangerous Ground. However, the claimants use imprecise and differing definitions of the

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Spratly Islands, thus generally obscuring the exact extent of sovereignty claims except in the case of the PRC and ROC.

Recent Occupation of the Paracels

The People's Republic of China now controls all the Paracels, but other countries have had forces on them. Japan occupied the islands during World War II. Taipei sent troops to Woody Island in 1946 after Japan's withdrawal but removed them in 1950 after Communist Chinese forces occupied Hainan Island.

In 1947, the French stationed a small garrison of colonial troops on Pattle Island and reopened a weather station built before the war. In 1956, the last troops under French command were replaced by forces of the former Government of Vietnam (GVN). Around the same time, the PRC settled about 200 people and established a naval base on Woody Island.

After 1956, both the GVN and the PRC continued to maintain garrisons on the Paracels. By 1973, Peking had forces on Woody, Rocky, and Lincoln Islands, while Saigon had a meteorological station and a company of Regional Forces on Pattle Island, two squads on Money Island, and two squads on Robert Island.

On January 19 and 20, 1974, Chinese troops, supported by MIG's and gunboats, drove the Vietnamese off the Paracels. Peking probably acted for a number of reasons, among which were to preempt Hanoi's occupation of the islands and to assert control over potential oil resources.

Recent Occupation in the Dangerous Ground Area

At present, all the active claimants except the PRC have troops on islands in or near Dangerous Ground, an area that includes the ill-defined Spratly Islands.

During World War II, Japan controlled the principal islands in the Dangerous Ground area. The ROC deployed troops to Itu Aba around 1946, after Japan's withdrawal, but removed them in 1949 after the Nationalists' defeat on the mainland. In 1956, the ROC returned to Itu Aba and until 1970 maintained the only garrison in the area.

In apparent anticipation of the discovery of oil, Philippine President Ferdinand Marcos on July 10, 1971, claimed

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that the ROC garrison was "a serious threat to our national security" and asked Taipei to withdraw its troops. By 1973, the Philippines probably had stationed small contingents of marines on Loaita, Nanshan, Northeast Cay, Thitu, and West York and had sent other marines to visit Flat Island periodically. In April 1976 a US rig operating on behalf of a consortium of Swedish and Philippine firms began drilling about 115 nautical miles northwest of Palawan Island, near Reed Bank.

Apparently also anticipating finds of oil, the former Government of Vietnam dispatched about 70 soldiers in August 1973 to occupy Nam Yit Island. In February 1974, the GVN responded to the Chinese takeover of the Paracels by sending additional contingents, of 20 to 40 men each, to occupy Sand Cay, Sin Cowe, Southwest Cay, and Spratly Island. The GVN claimed Amboyna Cay at the same time but said it was too small to support any troops.

In April 1975, after the fall of Saigon, Vietnam's "Liberation Navy" took Amboyna Cay, Nam Yit, Sand Cay, Sin Cowe, Southwest Cay, and Spratly Island. As a consequence, Manila withdrew its marines from Northeast Cay, which is about two nautical miles from Southwest Cay. By late 1975, however, Philippine marines had apparently returned to Northeast Cay.

Justification of Sovereignty Claims

In addition to deploying armed forces, past and present claimants have supported their assertions of sovereignty with a number of explanations.

Great Britain has never asserted sovereignty over the Paracels but in 1955 noted that two 19th century entrepreneurs engaged in guano mining had hoisted the British flag over Spratly Island and Amboyna Cay in the Dangerous Ground area. While the British have not renounced this claim, they have not pursued it in the intervening years.

Japan never formally asserted sovereignty over the Paracels. In 1939, however, Tokyo claimed all the principal islands in and around Dangerous Ground on the basis that they had been "no state's land" until 1921, when a Japanese firm had made a "considerable" investment in them. By the 1951 peace treaty signed with the World War II Allies (but

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not the PRC or the ROC), Japan renounced all claims to the "Spratly Islands and Paracel Islands." The treaty did not define either island group.

France as colonizer of Vietnam asserted sovereignty over the Paracels and Spratlys until the end of the first Indo-chinese war. According to France, China had ceded the Paracels to Vietnam in 1816, while France was the first country to discover and occupy the Spratlys. In September 1955, however, France implied that it had relinquished sovereignty over the Paracels in favor of Vietnam, but maintained that the Spratlys were "French and not Vietnamese." France, like Britain, while not renouncing its claim, has not pursued it actively.

Hanoi has made clear that it considers the Paracels and Spratlys to be Vietnamese but has never explained the basis of its claims. Vietnamese maps published since the fall of Saigon show both the Paracels and the Spratlys as part of Vietnam; however, these maps are of poor quality and, particularly in the Dangerous Ground area, do not permit a precise delimitation of Vietnamese claims. In response to the drilling near Reed Bank, Vietnam issued a vague statement that asserted sovereignty over the "Spratly Archipelago" but neither mentioned Reed Bank nor indicated the precise area where Vietnam claimed rights.

If Hanoi were to justify its claims publicly, it might use some of the arguments of the former Government of Vietnam, which frequently asserted sovereignty over the Paracel and Spratly Islands. The GVN claimed that the Vietnamese emperors had established sovereignty over these islands and that France as a colonial power had maintained jurisdiction over them on behalf of the Vietnamese. Like other claimants, the GVN did not define the precise extent of the Spratlys.

The People's Republic of China has frequently asserted sovereignty not only over the Paracel and Spratly Islands, but also over Macclesfield Bank, a feature entirely under water at all times. The PRC responded to the start of Philippine drilling by calling Reed Bank part of the Spratly Islands and making clear that China claimed exclusive rights over the resources there. While official PRC maps do not specify the extent of the "Spratly Archipelago," they do show the limits of Peking's overall claim in the South China Sea, which includes virtually all features down to 4° North. In support of this claim, Peking has cited evidence dating

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back to the Western and Eastern Han Dynasties to demonstrate that China was the first country to discover, develop, and exercise jurisdiction over the "South China Sea Islands."

The ROC, like the PRC, has claimed virtually all features in the South China Sea down to 4° North and has asserted exclusive jurisdiction over the resources in Reed Bank. Like Peking, Taipei argues that China was the first to discover and develop the islands. But whereas Peking has condemned the 1951 Peace Treaty with Japan for failing to assert Chinese rights, Taipei has contended that the treaty restored the Spratly Islands to China.

The Philippines has claimed Kalayaan, which Manila defines vaguely as a set of islands in Dangerous Ground distinct from the Spratlys. Manila has said that the Philippines acquired Kalayaan "by right of occupation" since the islands there "were res nullius and did not belong to any country." Manila has not claimed either the Paracels or the "Spratlys," but it has contended that these islands were "subject to the disposition" of the World War II Allies and therefore not open to unilateral acquisition by any country. In the apparent hope of minimizing public arguments with other potential claimants, Manila has defended its offshore drilling near Reed Bank on grounds that the bank is part of the Philippine continental shelf rather than on the basis of a claim of Kalayaan.

Attached as annexes are more detailed descriptions of how past and present claimants have justified their assertions of sovereignty. Included in the annexes are maps pertaining to the claims of Japan, Vietnam, the PRC, the ROC, and the Philippines.

Prepared by J. H. Yellin
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Approved by H. E. Horowitz
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ANNEX ABritish Claims

Great Britain has never claimed the Paracels. It has apparently issued no formal statement on Dangerous Ground since 1955, when London noted a past British claim to two islands and denied that any country might annex other islands in the area.

The Paracels

In 1975 a British Foreign Office research memorandum on the Paracels included the following statements:

- "Although the Paracel Islands have long been known to British sailors, Britain has never taken much interest in the islands."
- "There has never been a British claim to any of the islands, and Britain has avoided taking any public position as to their ownership. The nearest approach to a British public position is the statement in the China Sea Pilot that China annexed the islands in 1909. The China Sea Pilot is an official publication [of Great Britain]."
- "The British view at the beginning of the 20th Century appears to have been that the islands were a Chinese responsibility. By the 1920's, when the French became interested in the islands, Britain was inclined to favor the Chinese claim against the French, for strategic reasons. This remained the British view until the annexation of the islands [by Britain] in 1939, the Admiralty in particular being keen to keep these islands out of French hands."
- "Since the end of the Second World War, the main British interest has been to prevent a dispute over the Paracels leading to a major international incident."

Dangerous Ground

The last available British statement on Dangerous Ground is a Foreign Office memorandum of October 12, 1955, responding

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to a request from the American Embassy for clarification of London's position. According to the memorandum,

--"The Foreign Office have studied at some length the question of the status of the islands in the 'Dangerous Ground' area in the South China Sea...."

--"Two of the islets, Spratly and Amboyna Cay, were visited in 1864 by Her Majesty's Ship 'Rifleman,' a ship of the Royal Navy, and on October 25, 1877, a license was granted by Her Majesty's Government to a British subject and a United States citizen to hoist the British flag on these two islands and to work them for Guano. These rights were re-granted in 1889 by the Crown to the Central Borneo Company [of Brunei, a British dependency]."

--"With regard to the other islands listed within this group, the review of Her Majesty's Government has been that, with one possible exception [not specified by the memorandum], all except the two already mentioned are reef and shoals, some of them being listed as covered at all stages of the tide, and therefore uninhabitable and incapable of appropriation and occupation."

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ANNEX B

Japanese Claims

Japan controlled the Paracels and islands in the Dangerous Ground area during World War II but afterward renounced all claims to both island groups.

The Japanese never formally claimed the Paracels, but they mined guano on Lincoln and Woody Islands from around 1917 to 1929. When Tokyo abandoned the mining as unprofitable, the Japanese returned to occupy and mine the islands from 1939 to 1945.

Tokyo did claim what it called the "Sinnan Islands," which it defined as including all the principal islands in and around Dangerous Ground (see Map D). On March 31, 1939, the Japanese Government issued a proclamation declaring that:

--The Sinnan Islands had been "no state's land" until 1921, when a Japanese firm "invested a considerable amount of money in the building of permanent establishments for the development of the islands."

--In 1931 a business depression had obliged "the Japanese settlers concerned" to leave temporarily. In 1933, while the settlers were still gone, France had dispatched a warship to the islands and "publicly proclaimed their acquisition." The Japanese Government, however, in no way had recognized the French claim, and in 1936 another Japanese concern had resumed work on the islands.

--In view of "the close connection that has existed between the islands and the Japanese Empire" and to avoid "the possibility of further complications with the French government," the Japanese Government has "incorporated the Sinnan Islands under the jurisdiction of the Governor General of Formosa."

On the same day as the proclamation, the Japanese rejected a French aide memoire suggesting that Paris and Tokyo submit conflicting claims over the Spratlys to the

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Permanent Court of Arbitration at The Hague. And from 1939 to 1945, the Japanese occupied Spratly Island and other islands in the area.

Under the Peace Treaty signed by the World War II Allies at San Francisco on September 8, 1951, Japan renounced "all right, title and claim to the Spratly Islands and Paracel Islands." The treaty, however, did not define the extent of either island group.

In addition, neither the PRC nor the ROC signed the 1951 treaty. Taipei, however, signed a separate treaty with Tokyo on April 28, 1952, that said:

"It is hereby acknowledged that pursuant to Article 2 of the Peace Treaty with Japan signed in San Francisco on September 8, 1951, Japan has given up all rights, rightful titles and demands respecting the Spratly and Paracel Islands."

The 1952 treaty also failed to define the extent of either island group.

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ANNEX C

French Claims

France, before its defeat in Indochina, claimed sovereignty over the Paracels on the basis of Vietnamese history and over islands in the Dangerous Ground area on the basis of occupation. Paris has not made a formal statement on any of the islands in question since 1955, when it seemingly renounced the French claim to the Paracels while clearly asserting French sovereignty over "the Spratly Archipelago."

The Paracels

France showed some proprietary interest in the Paracels as early as 1899, when the Governor General of Indochina had plans prepared for the construction of a lighthouse on the islands. According to one French writer, the Paracels then "sank into oblivion" for about 20 years. For example, France did not protest a Chinese claim in 1909.

In the 1920's, however, Indochinese customs officials visited the Paracels, and an oceanographic ship, the De Lanessan, surveyed them. On December 25, 1927, the acting Governor General wrote the Minister of Colonies that France had "absolute rights over the Paracel Archipelago" by way of the "traditional rights" of Annam (the French protectorate in central Vietnam).

On December 4, 1931, and April 24, 1932, France reportedly sent the Chinese mission in Paris notes that:

- protested that Chinese firms were preparing to mine guano on the Paracels without permission of the Indochinese authorities;
- claimed that China had ceded the Paracels to Annam in 1816;
- said that Indochinese guards had been posted to the islands.

On June 15, 1932, three months after the Japanese had ended their occupation of Manchuria, the Governor General

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issued a decree creating on Pattle Island an administrative "Delegation for the Paracels" under the jurisdiction of Thua Thien Province. On September 8, 1937, two months after the Japanese had invaded China, Paris sent Tokyo an aide memoire asserting French sovereignty over the Paracels but saying that France would not occupy the islands until it had settled conflicting claims with China. But on July 4, 1938, after reports that Japan would invade Hainan Island, French officials in Tokyo and Paris affirmed that:

--France had stationed a small detachment of Annamite police, constructed a lighthouse, and opened a weather station on the Paracels, thereby effecting their complete and definite occupation.

--China had not only ceded the Paracels to Annam in 1816 but also had recognized the establishment of a French protectorate over Annam by the Treaty of Peking in 1885.

Japan occupied the Paracels during World War II, although the French probably also maintained some presence. In 1947, the French stationed a small garrison of colonial troops and reopened the weather station on Pattle Island.

Dangerous Ground Area

France showed virtually no interest in the Dangerous Ground area until 1927, when the De Lanessan visited islands there. On July 23, 1933, France gave official notice of a claim; in a note to the American Embassy in Paris, the Quai d'Orsay, without using the term "Spratly Islands" (plural) said:

--The gunboat Malicieuse had taken possession of Spratly Island as well as its "dependent islets" on April 13, 1930.

--The dispatch boats Astrolabe and Alerte had taken possession of Amboyna Cay, Itu Aba, Loaita, Northeast Cay, Southwest Cay, and Thitu, as well as their "dependent islets," from April 7 to April 12, 1933.

--All the above islands and islets were "dependent henceforth on French sovereignty."

France came to interpret its claim as covering all the "Spratly Islands" (plural) and showed that, as with the Paracels, fear of the Japanese had in part shaped its attitude

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toward the Dangerous Ground area. According to the daily bulletin of the French Ministry of Colonies for April 5, 1939, "since the occupation of this [Spratly] archipelago by a foreign country might be dangerous in case of war to maritime communications between Cochinchina and Tonkin," France had decided in 1930 to place the islands under its sovereignty.

French Withdrawal

On July 20, 1951, a spokesman of the French Foreign Ministry said that the draft peace treaty with Japan established French sovereignty over the Paracel Islands and Spratly Island (singular). But on September 5, 1955, after the end of the first Indochinese war, France sent the United States an aide memoire that carefully distinguished between the Paracels and the Spratlys (plural) and vaguely defined the latter. It said:

- The Paracels had been Vietnamese "since the eighteenth century"; thereby, the aide memoire implied that Paris had relinquished sovereignty over them in favor of Vietnam.
- France rather than Vietnam, however, had discovered "the Spratly Archipelago," which was "French and not Vietnamese" and which consisted of "Spratly Island itself, Itu Aba Island, and the islets lying to the north and south."

In 1956, the last troops under French command left both island groups. In the same year, the GVN sent troops to Pattle Island in the Paracels and the ROC sent forces to Itu Aba in the Dangerous Ground area.

While the French have not renounced their claim to the Spratlys, they have not pursued it actively.

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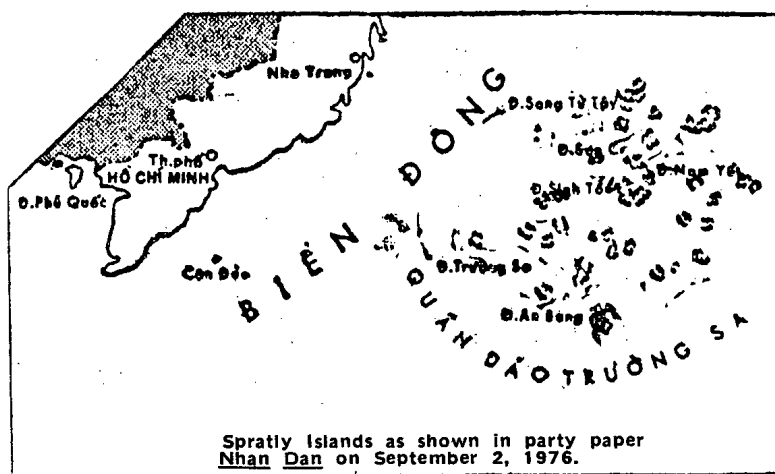
ANNEX DClaims of the
Socialist Republic of Vietnam

There is no doubt Hanoi believes that Vietnam has sovereignty over both the Paracels and islands in the Dangerous Ground area. In November 1975, for example, Senior General Van Tien Dung told a conference in Saigon that the People's Armed Forces would "firmly defend our territorial integrity including the territorial waters and airspace...from the frontier to the islands, from the mainland to the continental shelves."

Although unable to station troops on the Paracels because of China's presence, Vietnam has small contingents on six islands in the Dangerous Ground area. In addition, available Vietnamese maps published since the fall of Saigon show:

- the Hoang Sa (Paracel) Islands as part of Quang Nam-Da Nang Province;
- the Truong Sa (Spratly) Islands, which apparently include most of the islands in and near Dangerous Ground, as part of Dong Nai Province.

The maps are of poor quality, however, and, particularly in the Dangerous Ground area, do not permit an exact delimitation of Vietnamese claims (see below).



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In seeming deference to Peking, Hanoi has never given a detailed explanation of its claims to contested islands in the South China Sea and has not directly protested Chinese claims. Thus Hanoi, on September 14, 1958, recognized without stated reservations Peking's decision to fix the limit of its territorial sea at 12 nautical miles, even though Peking had explicitly applied this limit to the Paracels and Spratlys.

Also, Hanoi issued no official statement when the Chinese occupied the Paracels in January 1974. Agence France Presse, however, quoted "authorized" North Vietnamese sources as saying on January 21 that:

- the preservation of territorial sovereignty was a "sacred cause" for every nation, but
- complex territorial disputes "between neighboring countries" should be settled by negotiations "in a spirit of equality and friendship and good neighborliness."

Hanoi has been more direct when referring to the Dangerous Ground area but has not stated the exact extent of Vietnamese claims there. On May 5 and 8, 1975, the Vietnam News Agency noted that between April 14 and 29 the "Liberation Navy" had returned six "puppet forces held" islands to the "fatherland": Amboyna Cay, Nam Yit, Sand Cay, Sin Cowe, Southwest Cay, and Spratly Island.

In response to the beginning of exploratory operations near Reed Bank by the Philippines on April 29, 1976, the spokesmen of the Foreign Ministry of the Provisional Revolutionary Government on June 25 issued a cautious statement neither mentioning Reed Bank nor indicating the precise areas where Vietnam claimed rights:

"According to Western sources, recently a number of foreign companies proposed to conduct an oil survey in the area of the Spratly Archipelago which is part of Vietnamese territory. Regarding this issue, the PRG once again reaffirms its sovereignty over the Spratly Archipelago and reserves for itself the right to protect this sovereignty."

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ANNEX EClaims of the Former Government of Vietnam

If Hanoi were to justify its claims publicly, it might well use some of the arguments of the former Government of Vietnam, which pictured itself as the successor not only of Vietnamese imperial but also of French colonial authority. Saigon frequently asserted sovereignty over the "Hoang Sa (Paracel) and Truong Sa (Spratly) Islands" and maintained forces on both island groups. While listing the islands in the Spratlys of "relatively significant size," the GVN, like other claimants past and present, failed to define precisely the extent of this archipelago.

GVN Garrisons and Claims

By 1956, GVN troops had replaced the last forces under French command on Pattle Island in the Paracels. By 1974, when the Chinese expelled the South Vietnamese from the Paracels, the GVN had a meteorological station and company of Regional Forces on Pattle Island, 15 men on Money Island, and 15 men on Robert Island.

In August 1973, possibly responding to prospects of oil, the GVN dispatched about 70 men to occupy Nam Yit Island in the Spratlys. In February 1974, responding to the Chinese takeover of the Paracels, the GVN sent contingents of 20 to 40 men each to occupy Sand Cay, Sin Cowe, Southwest Cay, and Spratly Island, all of which lay within the French claim.

The most recent explanation of GVN claims, a White Paper issued in February 1975, repeated that no country present at the plenary session of the San Francisco Peace Conference on September 7, 1951, raised any objections when the Vietnamese delegate affirmed that the Paracel and Spratly Islands "have always belonged to Vietnam." (Neither the PRC nor the ROC attended the conference, however, and Vietnam was present as an Associated State of France.)

The Paracels

The GVN White Paper went on to claim explicitly all the Paracels and nine islands in the Dangerous Ground area. With regard to the Paracels, the White Paper said that:

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- They rest on the Vietnamese continental shelf and are joined to the Vietnamese coast by a submarine plinth.
- Vietnamese sovereignty over them "extends back over 300 years." In 1702, the royal Nguyen family (which controlled much of central Vietnam) had formed a society to exploit the islands, and in 1816 Emperor Gia Long "consecrated the will of the Vietnamese...by formally taking possession of the archipelago."
- "The French, who merely took over rights and responsibilities temporarily transferred to them by the people under their 'protection,' simply assured a normal continuation of jurisdiction on behalf of the Vietnamese."
- "At an early stage French action had been only intermittent...but in the last 30 years of their presence, the French did fulfill all the obligations of a holder of title."
- China began making "sporadic claims" to the islands in 1909 but did not in any way occupy them. On February 28, 1937, France proposed to China that the two countries settle their conflicting claims through international arbitration, "but China knew the risks involved in such a challenge and declined the offer."

The White Paper did not repeat an earlier GVN argument, put forth in a January 28, 1974, bulletin of the Vietnamese Embassy in Washington, that China had renounced all claims to the Paracels when two ships carrying cargoes insured by British companies were wrecked on the outlying reefs in 1895 and 1896. The GVN apparently dropped this argument after Great Britain pointed out that its records did not support Saigon's interpretation.

The Spratlys

In the 1975 White Paper, the GVN made a general assertion of sovereignty over the "Truong Sa [Spratly] Archipelago" and within this group claimed by name nine islands, seven of which France had also explicitly claimed, and three of which the Philippines occupied. The paper also indicated that Saigon was prepared to compromise with Manila over two other islands that the Philippines occupied. More specifically, the GVN White Paper said that:

- The Spratly archipelago included nine islands of "relatively significant size": Amboyna Cay, Itu Aba,

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Loaita, Northeast Cay, Southeast Cay, Spratly Island, and Thitu (all of which the French had explicitly claimed); Nam Yit and Sin Cowe (neither of which the French had explicitly claimed).

- Fishermen from the southern part of Vietnam had "always frequented" the Spratly Islands, and a Vietnamese map published around 1838 showed them as part of Vietnamese territory.
- Unlike the case of the Paracel Islands, the former Emperors of Vietnam "did not have the time" to organize "an administrative jurisdiction" for the Spratly Islands. "However, the French took all those measures necessary for the establishment of the legal basis for possession.... In 1933, the Spratlys were incorporated into the French colony of Cochinchina and from that year forward have had an adequate administrative structure."
- No state except Japan protested the French claim. "It should also be noted that the French occupation... did not arouse any protest from the United States Government, which was then acting on behalf of the Philippines.... This indicates there was no ground for a challenge of French rights on behalf of the Philippines."
- "Few people" knew of any Chinese claims before the PRC suddenly asserted sovereignty over the Spratlys in 1951. And Itu Aba, which the ROC garrisoned in 1956, was a center of French administrative services for the Spratlys.
- The Philippines had "surreptitiously occupied" Loaita, Northeast Cay, and Thitu. Manila's claim that these islands had been res nullius and were not part of the Spratly archipelago was "obviously erroneous." The French explicitly claimed all three islands, which are "an integral part of the Vietnamese Truong Sa [Spratly] archipelago."
- "Moreover, it remains to be determined in a common and friendly spirit whether or not some other islands occupied by Philippine soldiers [presumably Flat and Nanshan] are dependent islets of these Vietnamese main islands. In this regard, it should be recalled that when the French took possession of the Spratlys,

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they only listed the major islands on the official act and indicated these islands were incorporated 'with their dependent islets.'"

--In 1956, the Vietnamese Navy began patrolling the archipelago and in 1963 "rebuilt" sovereignty steles on Amboyna Cay, Loaita, Nam Yit, Northeast Cay, Southwest Cay, Spratly Island, and Thitu.

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ANNEX F

Claims by the People's Republic of China

Peking has frequently asserted sovereignty not only over the Hsi Sha (Paracel) and Nan Sha (Spratly) Islands, but also over the "Chung Sha Islands" (Macclesfield Bank), a feature entirely under water at all times. Indeed, official maps of the People's Republic of China:

- show the Chinese claim as including virtually all features in the South China Sea down to 4° North (see Map E);
- show the Spratly Islands as comprising all the principal islands in and around Dangerous Ground, to include Amboyna Cay, Flat, Itu Aba, Nanshan, Northeast Cay, Sin Cowe, Southwest Cay, Spratly Island, and Thitu; but nevertheless
- do not define the precise extent of the Spratlys.

In support of Chinese claims, the PRC has had troops in the Paracels since 1956, but it has never maintained a presence in the Dangerous Ground area.

First Public Claim by the PRC: 1951

The PRC's first public claim came after the World War II Allies published on July 12, 1951, a draft peace treaty with Japan that in part read:

"Japan renounces all right, title, and claim to Spratly Island [singular] and the Paracel Islands."

On August 15, 1951, then Foreign Minister Chou En-lai responded by condemning the draft treaty for failing to recognize Chinese sovereignty over the islands and by appealing to pre-1949 Nationalist claims on behalf of China. Chou commented that:

- The draft treaty stipulated that Japan should renounce all right to Spratly Island and the Paracel Islands,

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but again deliberately made no mention of the problem of restoring sovereignty over them.

--These islands, as well as the entire Spratly Islands and Macclesfield Bank, "have always been China's territory."

--Although Japan had occupied these islands during World War II, "the then Chinese Government" took them all over after Japan's surrender.

The final version of the treaty, signed at San Francisco on September 8, 1951, referred to the Spratly Islands rather than Spratly Island (singular), but otherwise repeated the language of the draft, despite the PRC's complaints.

Elaboration of PRC Claims: 1956 and 1958

Peking gave a more complete explanation of its claim on June 13, 1956, when the journal People's China responded to a remark by Philippine Vice President Carlos Garcia that the Spratly Islands should belong to Manila by reason of proximity. In addition to offering historical arguments to demonstrate that China had "for centuries" had "indisputable sovereign rights" over the Paracel and Spratly Islands as well as Macclesfield Bank, the journal:

--maintained that the Convention relative to the Frontier between China and Tonkin (a French protectorate in Vietnam), signed on June 26, 1887, confirmed that the Spratlys "belong to China." (The American Legation in Nanking, however, reported on August 3, 1933, that an official Chinese textbook described the southern boundary of China's waters as extending "just below" the Paracels and north of the Spratlys.)

--acknowledged that the "Chung Sha Islands" (Macclesfield Bank) were "shoals submerged by the sea," but asserted that "China's sovereign rights over them have always been taken as a matter of course."

On September 4, 1958, the PRC issued a statement declaring the extent of Chinese territorial sea to be 12 nautical miles and noting that this extent applied to the Paracels, Spratlys, and Macclesfield Bank. Without defining these features, the statement said that the territorial waters would be determined by straight baselines, thus implying

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that the seas around the Paracels, Spratlys, and Macclesfield Bank within these baselines were China's internal waters.

Takeover of the Paracels: 1974

Around 1956, the PRC settled about 200 people and established a naval base on Woody Island in the Paracels. At about the same time, GVN forces replaced the last forces under French command on Pattle Island.

Both the PRC and the GVN continued to maintain garrisons on the Paracels. By 1973, Peking had forces on Woody, Rocky, and Lincoln Islands; Saigon had a meteorological station and a company of Regional Forces on Pattle Island, two squads on Money Island, and two squads on Robert Island.

On January 11, 1974, a PRC Foreign Ministry spokesman accused the GVN of attempting to seize the Paracels permanently because it had "not long ago" incorporated some of the islands into Phuoc Tuy Province. (In fact, the GVN had done so four months previously, in September 1973.) The PRC spokesman routinely asserted Chinese sovereignty over the South China Sea Islands but stated for the first time that "the natural resources in the sea around them also belong to China."

On January 19 and 20, 1974, Chinese forces, supported by MIG's and gunboats, drove the Vietnamese off Money, Pattle, and Robert Islands. Peking asserted that it had acted in self-defense and had opened fire only after Saigon forces had "invaded" Chinese-held islands.

Whatever the pretext, China enjoyed overwhelming military superiority and probably acted for several reasons, among which were to preempt Hanoi's occupation of the islands, to assert control over potential oil deposits, and to consolidate coastal defenses. By April 1974, the Chinese had begun exploratory drilling in the Paracels.

Most Recent Explanation of PRC Claims: 1975

An article in the Kwangming Daily on November 25, 1975, offered the most recent and detailed explanation to date of Chinese claims. Unlike People's China in 1956, the Daily did not cite the Convention of 1887 or attack the Peace Treaty of 1951. Nevertheless, the Daily reiterated that the Chinese were the first to discover, develop, and exercise jurisdiction over the Paracels, Spratlys, and Macclesfield

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Bank. As evidence that the Chinese were the first to discover the islands, the Kwangming Daily said:

--"By the time of the Western and Eastern Han Dynasties (200 B.C.-220 A.D.), the South China Sea had become an important navigation route for China."

--During the Sung Dynasty (960-1279), "China's earliest sea maps were drawn, which included the South China Sea Islands."

--From 1405 to 1433, the Chinese navigator Cheng Ho called at these islands "time and again."

As evidence that China was the first to develop the islands:

--In 1974 and 1975, archeologists made new finds showing that "the Chinese people have lived on many of the Hsi Sha [Paracel] Islands since ancient times." Bowls, vases, and utensils from the Tang (618-907) and Sung dynasties were found on Robert Island. Other artifacts were found in or around Woody, Money, Pattie, Lincoln, Drummond, Jehangire Reef, North Reef, and Tree Islands.

--Fishermen from Hai Nan "began to settle on the Nansha [Spratly] Islands long ago." During the 1930's, the French found Chinese houses, temples, and "farmland" on Amboy Cay, Itu Aba, Loaita, Northeast Cay, and Spratly Island, as well as five Chinese living on Thitu.

As evidence that China was the first to exercise jurisdiction over the South China Sea Islands, the Daily cited activities of the Emperors and the Kuomintang, thereby again implicitly recognizing the legitimacy not only of Imperial but also of Nationalist claims on behalf of China:

--By the beginning of the second century A.D., the "Chinese government" was already sending officials to inspect the "South China Sea Islands." By the time of the Sung and Yuan dynasties, China had included these islands within its "sea frontier areas."

--Responding to the Japanese occupation of the Pratas Islands, the Governor of Kwangtung and Kwangsi in 1909 sent an expedition of 170 men under Admiral Li Chun to the Paracels. He surveyed 15 of the islands, hoisted the Chinese flag over Woody Island,

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and issued a proclamation reaffirming that the South China Sea Islands were "China's sacred territory."

--In 1946, "the then Chinese government" sent three warships "to take over the various islands." It erected stone tablets and stationed troops on Woody Island in the Paracels and Itu Aba in the Spratlys. In 1947, "the then Chinese government" placed the Paracels, Spratlys, and Macclesfield Bank islands "under the jurisdiction of Kwantung Province."

The Daily concluded by making clear that at a minimum China would continue to assert its claims over the Spratlys despite the Vietnamese and Philippine presence:

--"...Some of the islands have not yet been returned to the hands of the Chinese people. The Chinese people are determined to liberate Taiwan, and all islands belonging to China will certainly return to the embrace of the motherland."

--"The South China Sea Islands are China's sacred territory. We have the duty to defend them and build them up."

PRC Reaction to Drilling in Reed Bank: 1976

On June 14, 1976, a PRC Foreign Ministry spokesman responded to the start of Philippine drilling by issuing a statement on Reed Bank "of China's Nansha [Spratly] Islands." The statement made clear that China claimed exclusive rights over the resources within Reed Bank and strongly implied that China claimed exclusive rights over all the resources within its South China Sea claim:

--The PRC has "indisputable sovereignty" over the Paracels, Spratlys, and Macclesfield Bank and "their adjacent sea areas," and the "resources there belong to China."

--"Any foreign country's armed invasion and occupation of any of the Nansha [Spratly] Islands or exploration and exploitation of oil and other resources in the Nansha [Spratly] Islands constitute encroachments on China's territorial integrity and sovereignty and are impermissible."

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--"Any foreign country's claim to sovereignty over any of
of the Nansha [Spratly] Islands is illegal and null
and void."

By rejecting any "foreign country's" armed invasion or claim,
the spokesman seemed to aim his remarks at the Vietnamese
and Philippine presence while implicitly accepting that of
the ROC as representative of a "Chinese" claim.

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ANNEX GClaims of the Republic of China

The Republic of China has frequently asserted sovereignty over the Paracel and Spratly Islands as well as Macclesfield Bank. The ROC, like the PRC, has issued maps showing the Chinese claim as including virtually all features in the South China Sea down to 4° north (see Map E). In support of this claim, Taipei has troops on one island in the Dangerous Ground area, but none on the Paracels. Taipei's justification of Chinese claims has been similar but not identical to Peking's.

Past and Present ROC Garrisons

In 1946, the ROC sent troops to occupy Woody Island in the Paracels. But in 1950, within one year after the Nationalists' defeat on the mainland, Taipei withdrew its troops permanently.

Also around 1946, the ROC established a weather station on Itu Aba in the Dangerous Ground area, but it withdrew from the island after the defeat on the mainland. In 1956, ROC troops returned to Itu Aba, where they have remained. Presently on the island are about 300 ROC marines and sailors, a weather station, a radio facility, and 100 civilians, mostly retired ROC servicemen engaged in guano mining.

Justification of ROC Claims

The ROC asserted sovereignty over the "South China Sea Islands" as early as 1947. An internal briefing memorandum of the ROC Ministry of Foreign Affairs, dated August 3, 1973, is the most complete available justification of ROC claims. Many of the arguments resemble those of the PRC and have appeared in ROC media or communications to other governments, e.g., the 15th century voyages of Cheng Ho, the 1909 expedition of Li Chun, the 1946 deployment of troops to the islands, and the subsequent incorporation of the islands in Kwangtung Province. Nevertheless, the justification in the internal memorandum differs somewhat with both the previously outlined PRC position and the ROC position as advanced publicly or to other governments.

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- The memorandum acknowledged that France has contended that the Convention of 1887 between China and the French Protectorate of Tonkin did not establish Chinese sovereignty over either the Paracels or the Spratlys. This contrasts with the public ROC and PRC positions, which do not allude to any French reservations.
- The memorandum quoted without comment the 1951 peace treaty, as well as the 1952 peace treaty signed by Tokyo and Taipei; this contrasts with the PRC position, which has attacked the 1951 treaty, and with the ROC position as outlined in a letter of May 23, 1956, to the Philippine Vice-President. The letter argued that both the 1951 and 1952 treaties "stipulated that the Spratly Islands were among the territories which were restored by Japan to the Republic of China." (In fact, both treaties merely stipulated that Japan renounced all rights to the Paracels and Spratlys.)

The memorandum also maintained that in 1963 an ROC expedition had visited Amboyna Cay, Loaita, Nam Yit, Northeast Cay, Sand Cay, Southwest Cay, Spratly Island, Thitu, and West York "to boost the morale of the GRC garrison on Itu Aba Island," and that another expedition in 1966 had visited Loaita, Northeast Cay, Southwest Cay, and Thitu "to re-erect national monuments there." (No other country then had forces on these islands.)

Echoes of Peking

Taipei has implicitly recognized PRC claims on behalf of China. Commenting on the PRC's takeover of the Paracels, the Kuomintang paper Chung Yang Jih Pao on February 1, 1974, rejected the contention that they were Vietnamese and refrained from criticizing Peking. The paper reiterated that "our South China Sea island groups" include the Paracel Islands, Macclesfield Bank, and the Spratly Islands, "our southern-most boundary."

Also in terms similar to those of Peking, Taipei responded to the beginning of drilling by the Philippines by making clear that the ROC claimed exclusive jurisdiction over the resources in Reed Bank. The ROC Ministry of Foreign Affairs declared on May 28, 1976, that "no other country would have the right to enter into a contract for oil exploration or exploitation on the Reed Bank which is situated within the Nan Sha [Spratly] Islands."

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ANNEX H

Philippine Claims

Active Philippine interest in the Dangerous Ground area dates from at least World War II. In 1939, for example, Manila protested Tokyo's acquisition of the Spratlys as threatening Philippine security. On May 17, 1950, President Elpidio Quirino told the press that the Spratlys should belong to the Philippines, although he stopped short of making a formal claim.

The evolution of post-World War II Philippine claims is complex and not always consistent, but in general can be summarized as follows. The Government of the Philippines (GOP) has:

- claimed as res nullius an area in and around Dangerous Ground which the GOP calls Kalayaan (Freedomland) and vaguely defines as distinct from "the Spratlys";
- defended its right to drill in Reed Bank without saying that Reed Bank is part of Kalayaan;
- not claimed other islands in the Dangerous Ground area (or the Paracels), but said no other country can unilaterally occupy them.

In addition, the Philippines has stationed marines on perhaps five islands in the Dangerous Ground area and sent marines periodically to visit one other island.

Meads and Cloma

In the mid-1950's, the activities of Morton Meads, a private American citizen living in Manila, increased Philippine interest in the Dangerous Ground area. In a number of letters written from 1954-56 to, among others, President Eisenhower and the American Ambassador in Manila, Meads asked recognition and support for the "Kingdom of Humanity," which he described as a sovereign country "located approximately in the center of the South China Sea." Meads at various times said that his Kingdom included Nam Yit, Sin Cowe, Spratly, Thitu, and West York Islands.

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The Manila Chronicle's accounts of Mead's claims may have helped inspire a Filipino attorney, Tomas Cloma, who on July 6, 1956, proclaimed the establishment of a new state called the "Free Territory of Freedomland," whose government was "democratic in character, de facto in nature." He defined Freedomland's boundaries as including all the islands in the Dangerous Ground Area (see Map F).

Cloma may have been acting in part at the behest of the GOP. He declared, for example, that Freedomland would "make immediate representations for 'protectorate status' under the Republic of the Philippines as a first preference." He was a friend of Carlos Garcia, Vice President and Secretary of Foreign Affairs, who encouraged the Freedomland scheme.

Zonal Scheme: 1956

In a conversation with the American Chargé d'Affaires on June 26, 1956, Garcia not only defended Cloma's claims but also said he had recommended to President Magsaysay that the GOP assert Philippine rights in the Dangerous Ground area by dividing it into three zones (Map F). As outlined by Garcia:

- Zone Y lay closest to the Philippines and contained islands that had never been claimed or occupied by any other country. Therefore, the GOP should formally claim them.
- Zone X contained most of the Spratlys, including Itu Aba. By the peace treaty of 1951, Japan had relinquished all claims to them but not in favor of any other power. Therefore, the parties to the treaty retained authority over the islands, and the GOP should ask the parties to recognize a Philippine claim.
- Zone Z lay farthest from the Philippines and had little strategic or economic value, but the GOP should claim the islands there nonetheless.

Although the GOP never formally advanced the zonal scheme, Garcia's reasoning, with some variations, served as the basis of subsequent Philippine claims.

Garcia's Letter: 1957

On February 8, 1957, Garcia wrote Cloma a letter that substituted vague geography for the more precise zonal scheme

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and implicitly endorsed the concept of Freedomland. According to the letter:

--In the view of the Department of Foreign Affairs, "the islands, islets, coral reefs, shoals and sand cays within what you call 'Freedomland,' with the exclusion of those belonging to the seven-island group known internationally as the Spratlys," are res nullius, unoccupied, and uninhabited, and therefore "open to economic exploitation and settlement by Filipino nationals."

--"As regards the seven-island group known internationally as the Spratlys, the Philippine Government considers these islands as under the de facto trusteeship of the victorious Allied Powers of the Second World War, as a result of the Japanese Peace Treaty...." Thus, the Spratlys are "open to economic exploitation and settlement by nationals of any member of the Allied Powers," including the Philippines.

The letter nevertheless failed to say which islands were the Spratlys.

Renewed Interest and Marcos' 1971 Press Conference

Manila's interest in Freedomland apparently remained dormant for more than 10 years, when it was revived by reports of potentially valuable petroleum deposits. Around 1970 and 1971, Manila probably sent small contingents to visit the islands of Flat, Nanshan, Southwest Cay, Thitu, and West York.

In July 1971, a Philippine Congressman alleged that ROC troops on Itu Aba had fired on a boat and airplane owned by him. In response to this supposed incident, President Marcos held a press conference in Manila on July 10, 1971, during which he made an implied claim to Freedomland and called the ROC troops on Itu Aba a threat to Philippine security. He said:

--"In 1957 we affirmed that the Spratly Island Group falls under the de facto trusteeship of the allied powers by virtue of the Japanese peace treaty.... By virtue of that trusteeship no one may introduce troops on any one of these islands without the permission and consent of the allied powers...."

--"Because the Chinese garrison on Ligaw [Itu Aba] was established on the island without the permission and

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consent of the Allies, we have requested the Chinese government to withdraw."

--"Freedomland refers to the 53-island group, with the exclusion of the Spratlys, which Filipino explorer Tomas Cloma explored and occupied from 1947 to 1950. These are islands, islets, coral reefs, cays and banks which are regarded as res nullius and may be acquired according to the modes of acquisition recognized under international law--among which is occupation and effective administration."

--"Insofar as these islands are concerned, we are in effective control of the islands of Pagasa [Thitu], Lawak [Nanshan], and Patag [Flat]."

Marcos thus retained a legal distinction between the Spratlys and Freedomland, while implying that the Spratlys were within the area of Freedomland. Although he indicated that Itu Aba was part of the Spratlys and that Flat, Nanshan, and Thitu were not, he failed to define further the limits of either the Spratlys or Freedomland.

Formal Claim: 1974

By 1973, Manila had stationed small contingents of marines on Loaita, Nanshan, Northeast Cay, Thitu, and West York and was sending some marines to make occasional visits to Flat. As indicated previously, during August 1973 the GVN occupied Nam Yit, and after the PRC takeover of the Paracels in January 1974, the GVN also occupied Sand Cay, Sin Cowe, and Southeast Cay. All four islands lay within Cloma's definition of Freedomland.

On February 5, 1974, the GOP responded by advancing a formal claim in notes to the GVN and ROC Ambassadors which marked the completion of a process that transformed Freedomland from one man's claim to an official Philippine concept. The notes for the first time used "Kalayaan," Freedomland in Tagalog, and taken together said that:

--The landing of Vietnamese forces in the area known as Kalayaan was a "matter of grave concern" to the Philippine Government, which had previously declared that "said area had been acquired by right of occupation."

--Two ROC destroyers were "in the general area" during the Vietnamese landing, and the Philippine Government strongly protested this ROC "display of force."

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--The Philippines now occupied Loaita, Nanshan, Northeast Cay, Thitu, and West York. (The notes did not repeat Marcos' 1971 assertion that Manila controlled Flat Island.) The Philippines had acquired these five islands, which by their proximity had clear strategic importance, "as they were res nullius and did not belong to any country." Moreover, they did not form part of the Spratlys and were "located about 200 miles northeast thereof."

Thus, unlike Marcos, who in 1971 had implied the Spratlys were within the area of Freedomland, the notes indicated that the Spratlys were outside Kalayaan. But once more there was considerable ambiguity, for the notes failed to define the limits of either Kalayaan or the Spratlys and stopped short of claiming by name the islands occupied by Vietnam or Taiwan.

Finally, while not asserting any Philippine claim to the Paracels and Spratlys, the notes for the first time contended that the Paracels as well as the Spratlys were "subject to the disposition" of the World War II Allies. "By no means, therefore, can any single country acquire sovereignty over the Paracels and Spratlys by use or display of force in the vicinity thereof."

Defense of Reed Bank Drilling

On April 29, 1976, the Brinkerhoff II, a US rig operating on behalf of a consortium of Swedish and Philippine firms, began drilling about 115 nautical miles northwest of Palawan Island, near a submerged feature called Reed Bank. In the apparent hope of minimizing public arguments with other potential claimants, Manila has defended this drilling on the basis of Law of the Sea and tacit Chinese approval, rather than on the basis of claims to Kalayaan.

Responding to renewed assertions of sovereignty over the Spratlys by Hanoi, Taipei, and Peking, Foreign Secretary Carlos Romulo told the press on June 14 that:

--"The Reed Bank is within the Continental Shelf of the Philippines which was declared by the Republic of the Philippines to be within the economic exploitation zone of the country in accordance with a United Nations convention on continental shelves [sic] in 1958 [to which the Philippines is not a party]."

--"The Republic of the Philippines declared its right to explore and exploit the economic zone within 200 miles without opposition from anyone in 1968."

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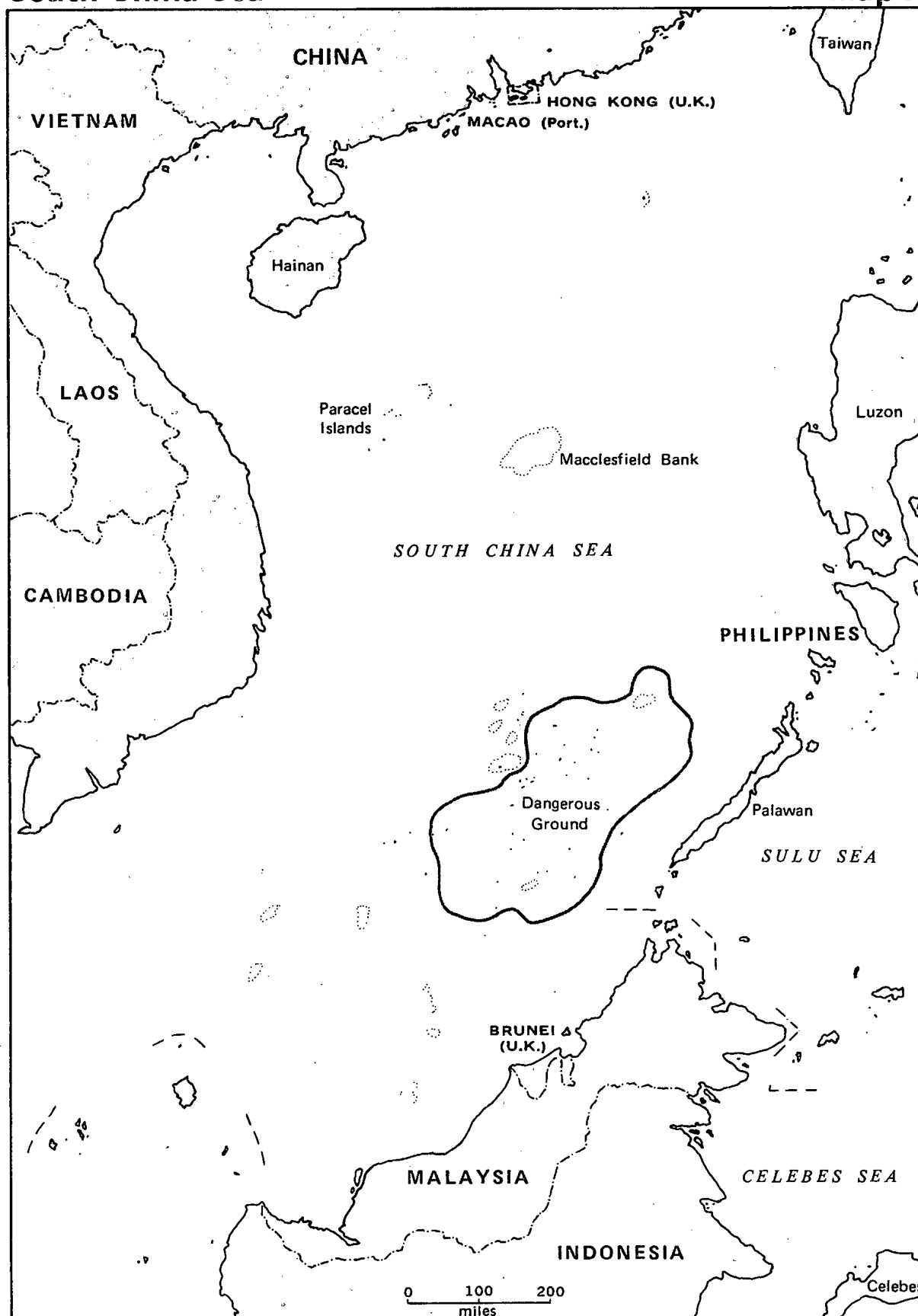
--"The matter of exploration and exploitation of the area west of Palawan was brought up by President Marcos in conversations with the Chinese leaders... in June 1975."

In fact, the Philippines did not declare a 200-mile economic zone. Instead, Marcos in a proclamation of March 20, 1968, borrowed terminology of the 1958 Convention on the Continental Shelf. He asserted that the GOP had exclusive jurisdiction and control over exploitation of the seabed and subsoil of the continental shelf to where the depth of the waters admitted "the exploitation of such resources." Romulo may have avoided repeating the substance of Marcos' proclamation because Reed Bank is about 70 nautical miles west of the 1,300-meter-deep Palawan trench. Nevertheless, the Philippine Solicitor General has contended that "the trench is part of the shelf, not a boundary to it."

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South China Sea

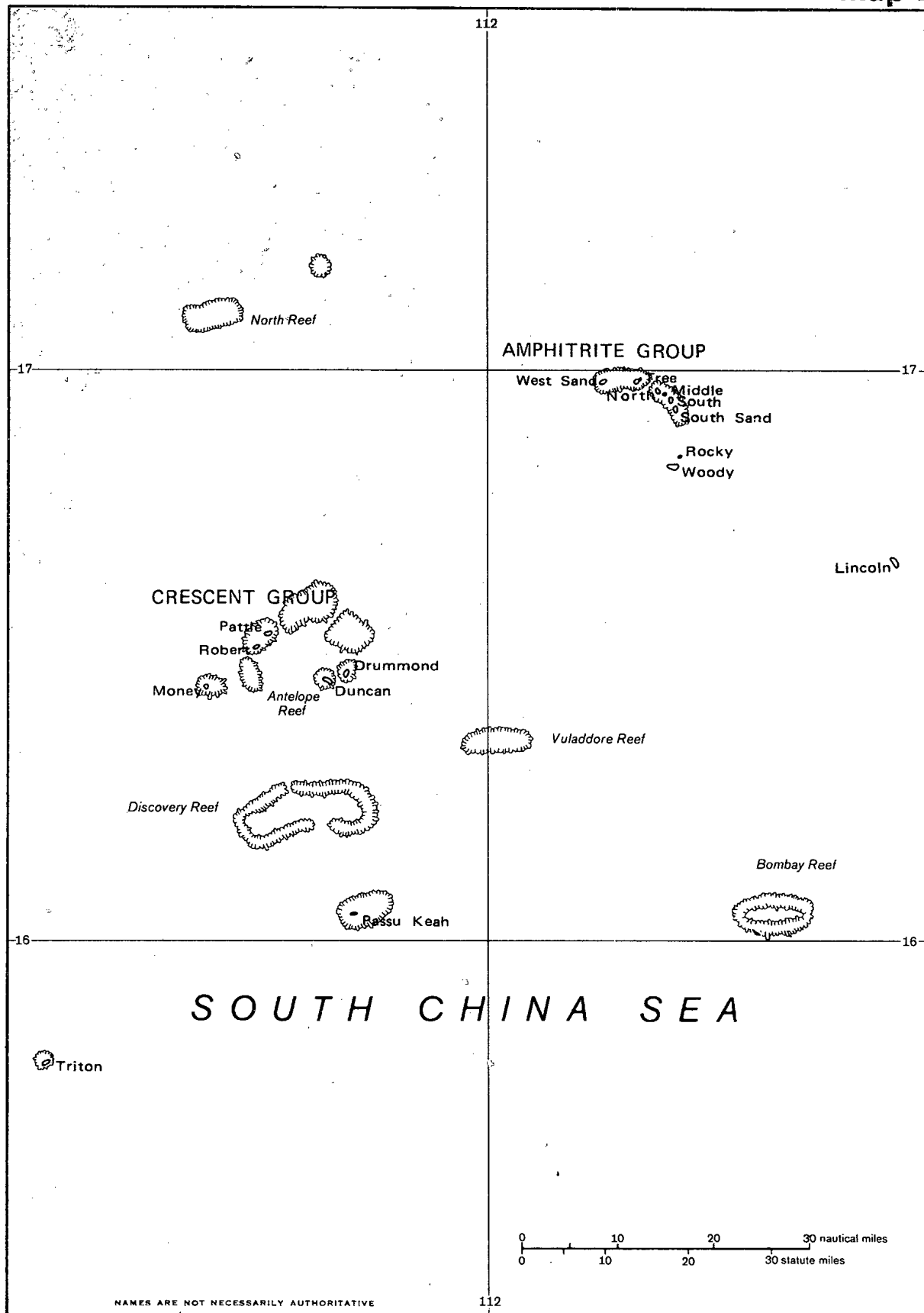
Map A



2490 12-76 STATE(RGE)

Paracel Islands

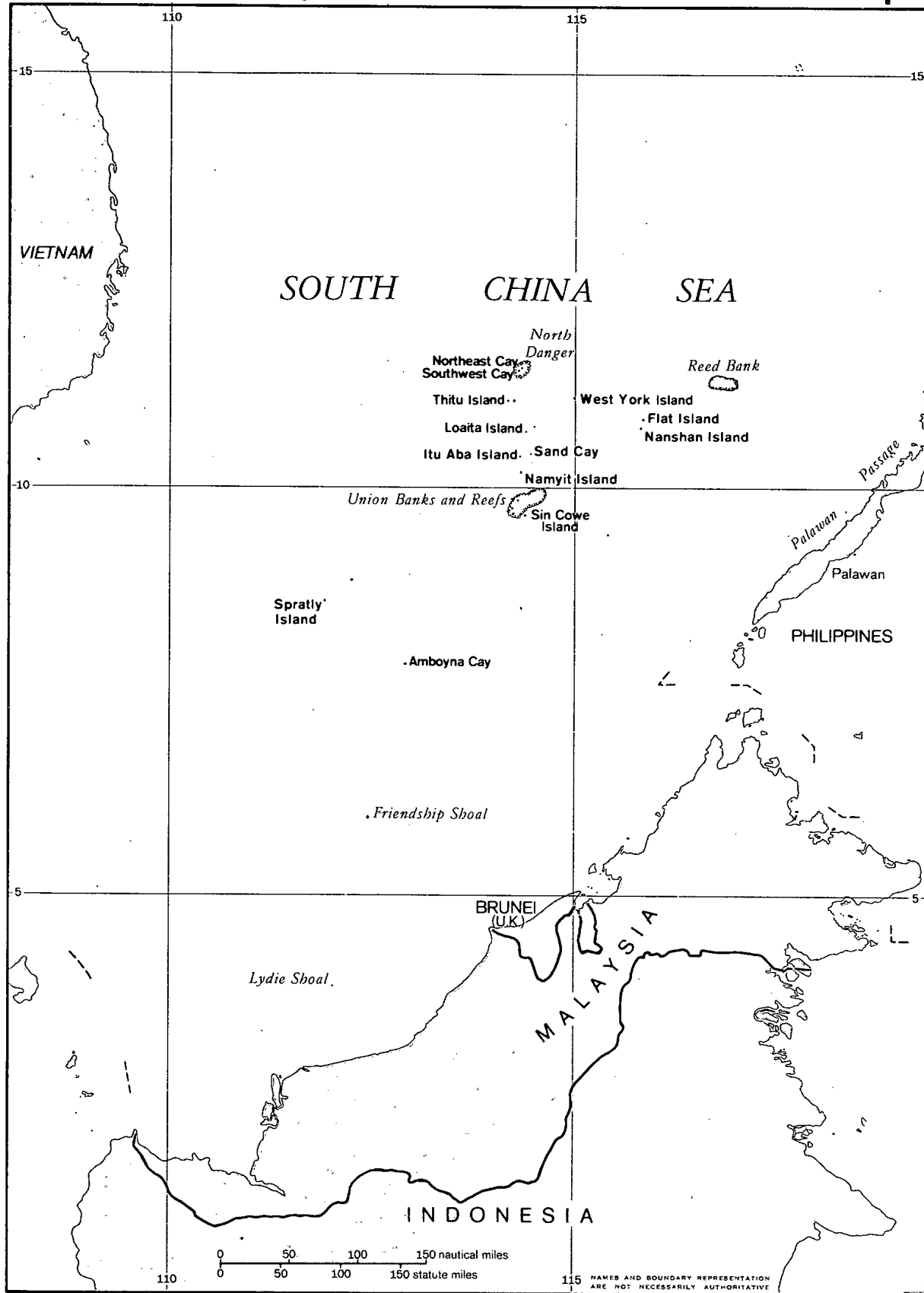
Map B



2491 12-76 STATE(RGE)

Islands in the Dangerous Ground Area

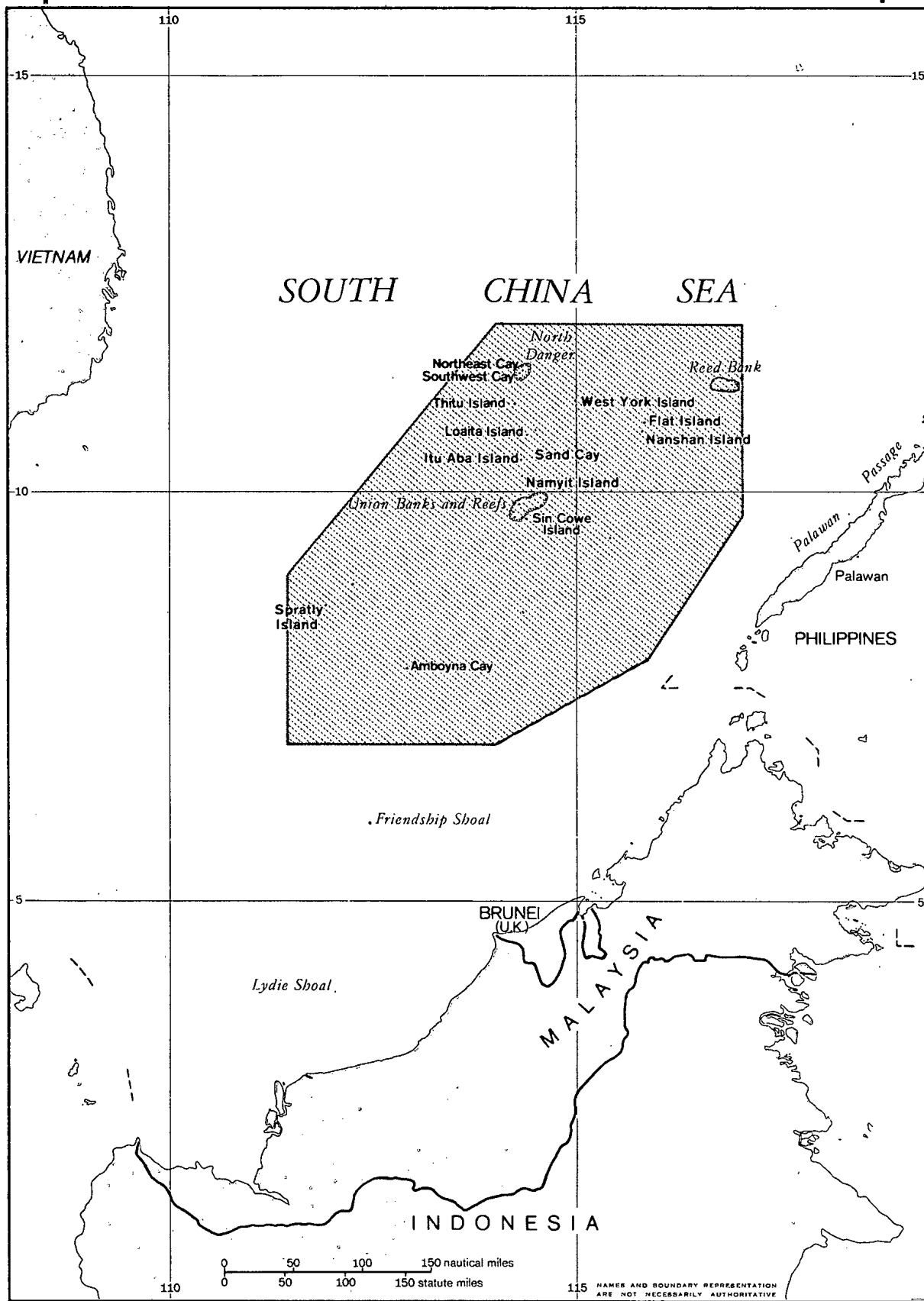
Map C



2492 12-76 STATE(RGE)

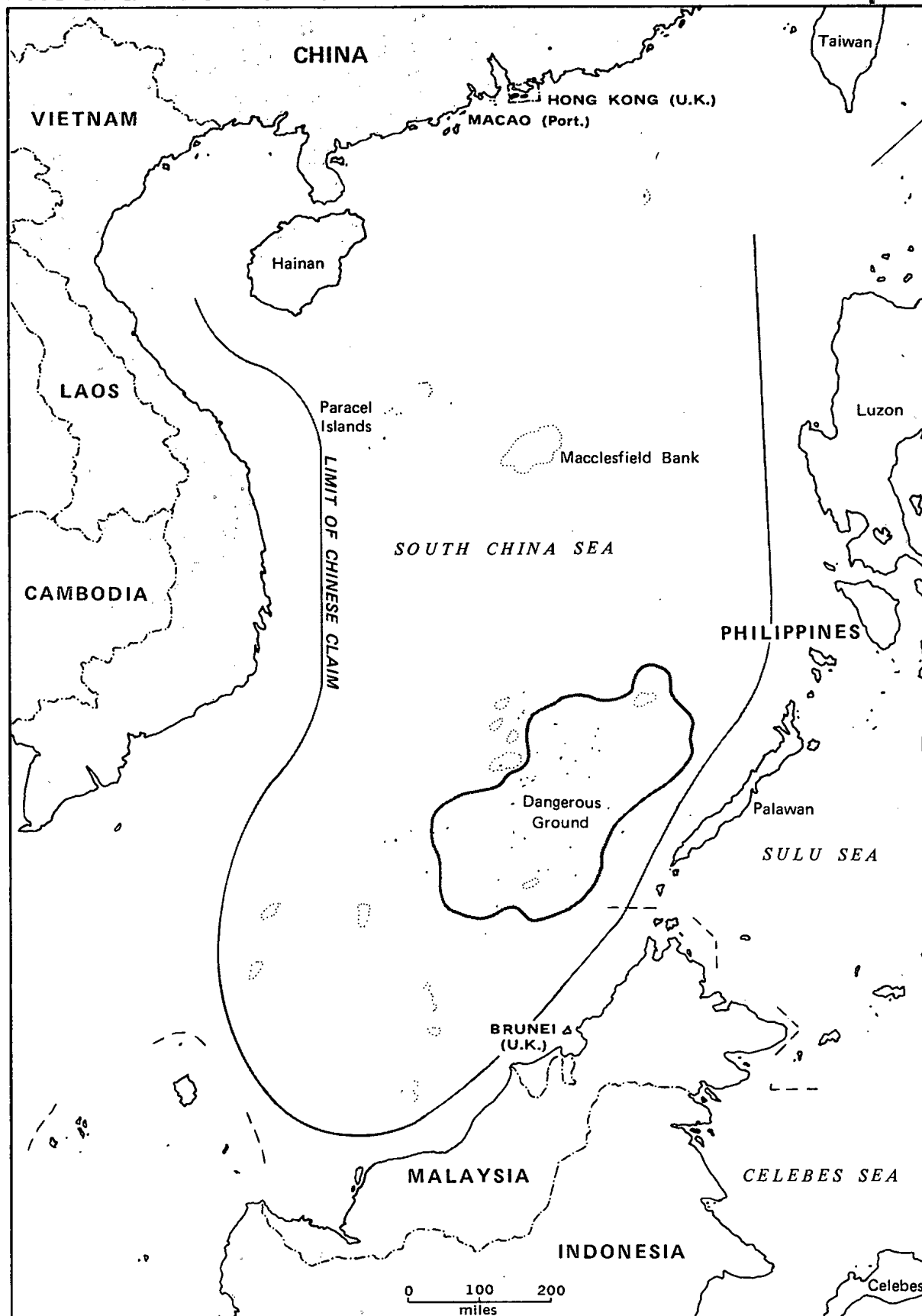
Japanese Claim of 1939

Map D



PRC and ROC Claims

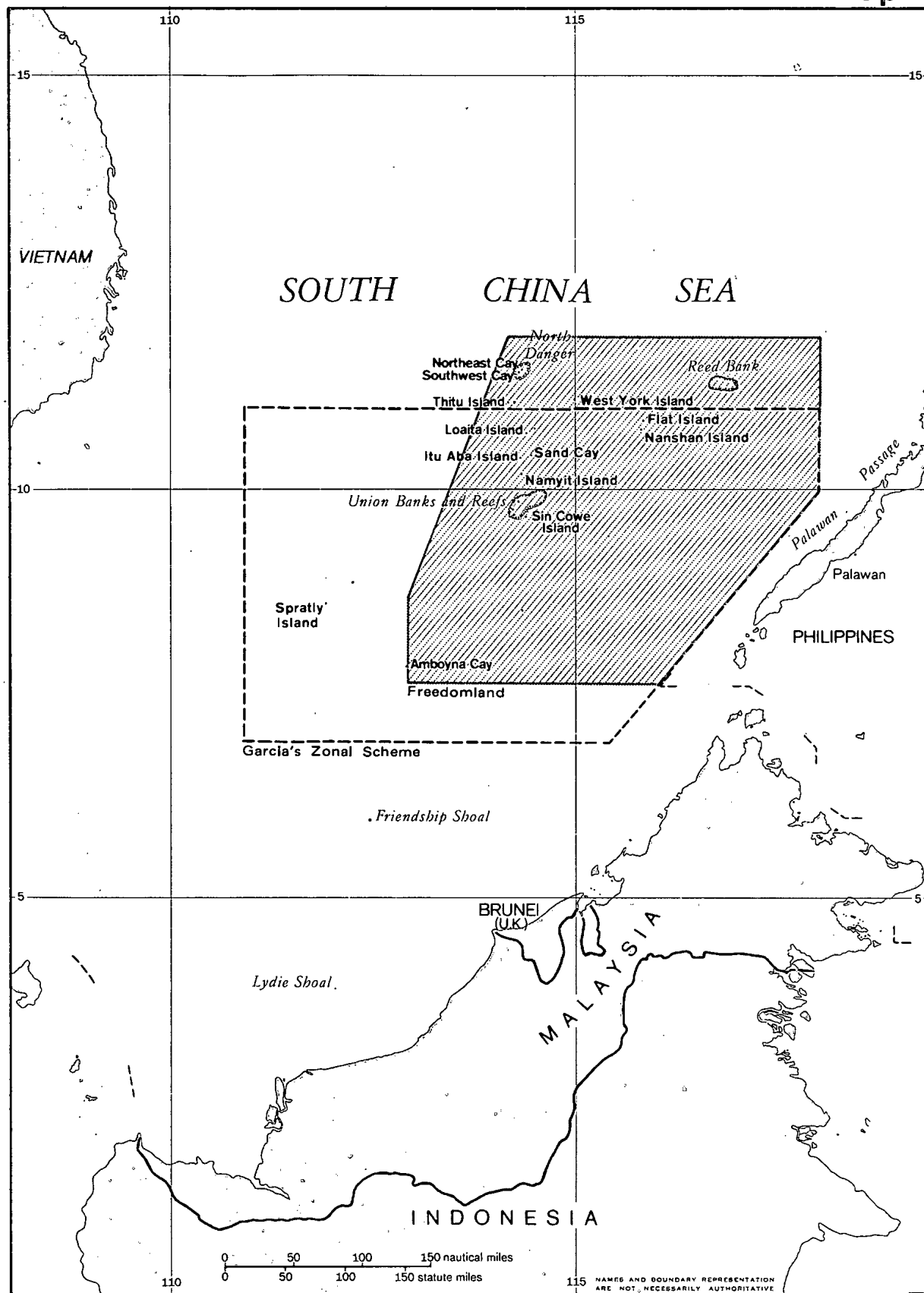
Map E



2494 12-76 STATE(RGE)

Tomas Cloma's Definition of Freedomland and Carlos Garcia's Zonal Scheme

Map F



2495 12-76 STATE(RGE)